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MATTERS RELATING TO ARRANGEMENTS FOR THE FINANCIAL MECHANISM AND FOR TECHNICAL AND FINANCIAL SUPPORT TO DEVELOPING COUNTRY PARTIES

IMPLEMENTATION OF ARTICLE 11 (FINANCIAL MECHANISM), PARAS. 1-4

Issues to be addressed by the Committee: a preliminary overview

Note by the interim secretariat

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I. INTRODUCTION

A. Background

1. The Committee, consistent with provisions of General Assembly resolution 47/195, is in the process of formulating recommendations for the Conference of the Parties (COP) on matters relating to arrangements for the financial mechanism. The Committee initiated substantive discussion of such matters at its seventh session; it adopted some conclusions on these matters at its eighth session and continued further deliberations on them at its ninth session. At that session, the Committee concluded that its work on these issues was a continuing process and that it would return to them at its tenth session in order to build on agreements reached (see A/AC.237/55, para. 77). This note is submitted to facilitate that process.

2. The interim arrangements for the financial mechanism provided for in Article 21.3 of the Convention have entered into force with the Convention. Article 21.3 provides that "The Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the international entity entrusted with the operation of the financial mechanism referred to in Article 11 on an interim basis. In this connection, the Global Environment Facility should be appropriately restructured and its membership made universal to enable it to fulfil the requirements of Article 11."

3. By General Assembly resolution 47/195, paragraph 6, the Committee is mandated to "contribute to the effective operation of the interim arrangements set out in Article 21 of the Convention."

4. On 16 March 1994, the Participants in the Global Environment Facility (GEF) accepted a document entitled "Instrument for the establishment of the restructured Global Environment Facility" (hereinafter referred to as "the GEF Instrument"), which was subsequently adopted by the implementing agencies in accordance with their respective rules and procedural requirements. This Instrument establishes a Council that has amongst its functions that of overseeing relations with conventions served by the GEF. It also provides for the replenishment of the GEF with new financial contributions for the period from 1 July 1994 to 30 June 1997, which are expected to amount to US$2 billion. The Instrument, copies of which will be available at the tenth session of the Committee, states that "In partial fulfillment of its purposes, the GEF shall, on an interim basis, operate the financial mechanism for the implementation of the United Nations Framework Convention on Climate Change ... in accordance with such cooperative arrangements or agreements as may be made pursuant to paragraphs 27 and 31. ... the GEF shall function under the guidance of, and be accountable to, the Conference[s] of the Parties which shall decide on policies, program priorities and eligibility criteria for the purposes of the conventions. The GEF shall also be available to meet the agreed full costs of activities under Article 12, paragraph 1, of the United Nations Framework Convention on Climate Change" (GEF Instrument, para. 6). It further states that "until the first meeting of its Conference of the Parties, the Council shall consult the convention's interim body" (GEF Instrument, para. 27).

B. Scope of the note

5. The present note addresses the following issues:

(a) Guidance from the COP to the operating entity or entities, and, in this regard, eligibility criteria, programme priorities, policies and "agreed full incremental costs";

(b) Modalities for the functioning of operational linkages between the COP and the operating entity or entities, and, in this regard, the determination of the amount of funding necessary and available for the implementation of the Convention, and the process for negotiating an agreement between the COP and the operating entity or entities, including reciprocal arrangements for representation at meetings;

(c) Temporary arrangements between the Committee and the GEF; and

(d) Consideration of the maintenance of the interim arrangements referred to in Article 21.3.

6. Regarding each of these issues, the note recapitulates conclusions reached by the Committee and provides indications of information collected, proposals made or reports submitted. Regarding new issues, the note, inter alia, recalls the relevant provisions of the Convention.

C. Possible action by the Committee

7. The Committee may wish to:

(a) Advance its consensus on matters on which the COP is required to provide guidance to the entity or entities operating the financial mechanism, such as eligibility criteria, programme priorities, policies and the determination of "agreed full incremental costs" (which are addressed in section II below and, in some cases, in the documentation requested by the Committee);

(b) Advance its consensus on matters relating to operational linkages between the COP and the operating entity or entities (which are addressed in section III below and in the legal opinion provided by the United Nations Office of Legal Affairs) (see A/AC.237/74);

(c) Adopt a decision that consolidates and formally communicates to the GEF Council the conclusions of the Committee on the above subjects, adopted at its tenth and previous sessions, which are relevant to the function of the GEF as the interim operating entity of the financial mechanism, and that invites the GEF Council to make a report, for consideration by COP 1, consistent with the conclusions of the Committee on the subject of

reporting and the relevant provisions of the GEF Instrument;

(d) Initiate preparations for the review by COP 1 of the interim arrangements for the financial mechanism and for a decision on the maintenance of these arrangements, as required by Article 11.4;

(e) Indicate to the interim secretariat any further technical, analytical and legal inputs that the Committee may need at its eleventh session to support its work on matters relating to the financial mechanism, as well as any contribution that the interim secretariat, in collaboration with the GEF secretariat, might make to work on that component of the long-term operational strategy of the GEF that is related to the implementation of the Convention;

(f) Request the interim secretariat to draw up a draft recommendation from the Committee to COP 1 on matters related to the financial mechanism, for consideration by the Committee at its eleventh session, according to the procedure that may be decided by the Committee at its tenth session after considering document A/AC.237/57.

II. GUIDANCE FROM THE CONFERENCE OF THE PARTIES TO THE OPERATING ENTITY OR ENTITIES

A. Eligibility criteria

8. With regard to eligibility criteria for countries, the Committee, at its eighth session, concluded that:

(a) "Eligibility criteria will apply to countries and to activities and will be applied in accordance with Articles 11.1, 11.2 and 11.3";

(b) "Regarding eligibility of countries, only countries that are Parties to the Convention would be eligible to receive funding upon entry into force of the Convention. In this context, only developing country Parties would be eligible to receive funding through the financial mechanism, in accordance with Article 4.3" (see A/AC.237/41, para. 84 (ii)).

9. Proposals made by Governments and groups thereof on further eligibility criteria for countries are presented in document A/AC.237/Misc.38. The Committee may wish to consider the issue further in the light of such proposals.

10. Concerning eligibility criteria for activities, the Committee, at its ninth session, agreed that:

(a) "Those activities related to obligations under Article 12.1 to communicate information for which the "agreed full costs" are to be met, are eligible for funding;"

(b) "Measures covered by Article 4.1 are eligible for funding through the financial

mechanism in accordance with Article 4.3. Such measures should be agreed between the developing country Party and the international entity or entities referred to in Article 11.1, in accordance with Article 4.3;"

(c) "In addition to the above, such measures would be eligible for financial support under Article 11.5 (A/AC.237/55 para. 79(c))."

11. The Committee may wish to consider identifying additional criteria for the eligibility of activities. In particular, proposals have been made by Governments and groups thereof concerning the eligibility of adaptation measures for funding under the financial mechanism. These proposals are presented in document A/AC.237/Misc.38. The interim secretariat has been requested to prepare a report on adaptation, synthesizing information sought from countries, international organizations and relevant groups (A/AC.237/55, para. 89). This report is presented in document A/AC.237/68.

B. Programme priorities

12. The Committee concluded at its eighth session that "priority should be given to the funding of agreed full costs (or agreed full incremental costs, as appropriate) incurred by developing country Parties in complying with their obligations under Article 12.1 and other relevant commitments under the Convention. In the initial period, emphasis should be placed on enabling activities undertaken by developing country Parties, such as planning, endogenous capacity building including institutional strengthening, training, research and education, that will facilitate implementation, in accordance with the Convention, of effective response measures." (See A/AC.237/41, para. 84 (iii).)

13. At the eighth and ninth sessions, proposals were made by delegations with respect to priorities. As requested, the interim secretariat sought information from Governments and relevant international agencies on specific near-term priorities and needs of developing countries. Positions of Governments and agencies on this issue are presented in document A/AC.237/Misc.38 and reported on in document A/AC.237/69. The Committee may wish to consider identifying further programme priorities.

14. In this connection, the Committee, at its ninth session, discussed activities related to the communication of information referred to in Article 12.1 and concluded that the process of their implementation in the context of Article 12.5 should be initiated. A first step in this regard would be the elaboration of the format and content of such communications and the identification of the needs of the developing country Parties with respect to capacity-building

activities to enable them to fulfil their obligations under Article 12.1. The Committee took note of the intention of the Group of 77 and China to convene a meeting of experts from developing countries on the occasion of the tenth session of the Committee and to inform the Committee of the results of that meeting at that session.

15. The Committee requested the interim secretariat to prepare a document for the tenth session of the Committee summarizing the key elements of the format adopted for the communication of information by Annex I Parties pursuant to Article 12.2. (This format is contained in Committee decision 9/2.) That document could be taken into account by the above-mentioned meeting of experts from developing countries (see A/AC.237/55, paras. 82 and 83).

16. The Committee has the afore-mentioned document before it (A/AC.237/70) and it may wish to continue consideration of the funding of communications by developing country Parties under Article 12.1, taking into account information that may be conveyed to it in due course regarding the above-mentioned meeting of experts.

C. Policies

17. With respect to activities undertaken under Article 11, the Committee, at its ninth session, agreed that (see A/AC.237/55, para. 84 (a) and (b)):

(a) "Within the framework of the financial mechanism: (emphasis added)

(i) The [operating] entity or entities should, in all funding decisions related to the financial mechanism, take into account Article 4.1, 4.7, 4.8, 4.9 and 4.10 of the Convention;

(ii) Projects funded through the financial mechanism should be country-driven and in conformity with, and supportive of, national development priorities of each country;

(iii) The operating entity or entities should ensure that, with reference to activities involving transfer of technology, such technology is environmentally sound and adapted to suit local conditions."

18. The Committee may wish to consider in what additional areas policies are needed to guide the operation of the financial mechanism and what technical and analytical work may be needed to support the elaboration of such policies.

19. In addition, the Committee agreed that :

(b) "Outside the framework of the financial mechanism: (emphasis added)

(i) Consistency should be sought and maintained between activities (including those related to funding) relevant to climate change undertaken outside the framework of the financial mechanism and the policies, programme priorities and eligibility criteria for activities as relevant, established by the COP. The issue of monitoring such consistency by the COP, including reporting modalities, will be further considered by the Committee at its tenth session;

(ii) The interim secretariat was requested to prepare a report on this subject for the tenth session in order to assist the Committee in identifying ways and means to seek and maintain such consistency."

20. The Committee envisaged a monitoring system for the activities of regional and multilateral financial and other institutions and requested the interim secretariat to prepare a report on their activities relevant to the ultimate objective of the Convention, including with respect to Article 4.1 (see A/AC.237/55, para. 12).

21. The Committee has before it notes on these subjects (contained in A/AC.237/71 and A/AC.237/72) which it may wish to consider further. The Committee may also wish to indicate what further work by the interim secretariat may be needed.

D. Agreed full incremental costs

22. At its ninth session, the Committee noted that the various issues of incremental costs were complex and difficult and that further discussion on the subject was therefore needed. It also concluded that the application of the concept of "agreed full incremental costs" should be flexible, pragmatic and on a case-by-case basis. Guidelines in this regard would be developed by the COP at a later stage on the basis of experience. The interim secretariat was requested to continue monitoring work carried out in this matter taking into account also views expressed by Governments, and to keep the Committee informed of progress achieved (A/AC.237/55, para. 84 (c)).

23. The Committee has before it a note providing information on work carried out on this matter and views expressed by Governments (see A/AC.237/73). It may wish to take note of this information and indicate what further work might be useful in this regard.

III. MODALITIES FOR THE FUNCTIONING OF OPERATIONAL LINKAGES BETWEEN THE CONFERENCE OF THE PARTIES AND THE OPERATING ENTITY OR ENTITIES

A. Reporting, accountability and reconsideration of funding decisions

24. At its eighth session, the Committee reached the following preliminary conclusions on issues addressed under Article 11.3 (a), (b) and (c) (accountability, reconsideration of funding decisions and reporting) (see A/AC.237/41, para. 86):

(a) "The COP, the supreme body of the Convention, and the entity or entities entrusted with the operation of the financial mechanism, shall agree upon arrangements to give effect to the provisions of paragraphs 1 and 2 of Article 11 through the operational linkages which are discussed below;

(b) "In line with Article 11.1 of the Convention, the COP will, after each of its sessions, communicate to the governing body of the operating entity relevant policy guidance for implementation and action by that governing body, which shall accordingly ensure the conformity of the entity's work with the guidance of the COP. Guidance from the COP will address issues relating to policies, programme priorities and eligibility criteria, as well as possible relevant aspects of the activities of the operating entity that are related to the Convention;

(c) "The governing body of the operating entity has the responsibility of ensuring that funded projects related to the Convention are in conformity with the policies, eligibility criteria and programme priorities established by the COP. It will report regularly to the COP on its activities related to the Convention and the conformity of these activities with the guidance received from the COP;

(d) "Regular reports by the Chairman or secretariat of the operating entity to its governing body will be made available to the COP through its secretariat. Other official documentation of the operating entity should also be made available to the COP through its secretariat;

(e) "In addition, the COP should receive and review at each of its sessions a report from the governing body of the operating entity which should include specific information on how it has applied the guidance and decisions of the COP in its work related to the Convention. This report should be of a substantive nature and incorporate the programme of future activities of this entity in the areas covered by the Convention and an analysis on how the entity, in its operations, implemented the policies, eligibility criteria and programme priorities related to the Convention established by the COP. In particular, a synthesis of the different projects under implementation and a listing of the projects approved in the areas covered by the Convention, as well as a financial report including accounting and evaluation of its activities in the implementation of the Convention, indicating the availability of resources, should be included;

(f) "In order to meet the requirements of its accountability to the COP, reports submitted by the governing body of the operating entity should cover all its activities carried out in implementing the Convention, whether decisions on such activities are made by the governing body of the operating entity or by bodies operating under its auspices for the implementation of its programme. To this end, it shall make such arrangements with such bodies as might be necessary regarding the disclosure of information;

(g) "The funding decisions for specific projects should be agreed between the developing country Party concerned and the operating entity in conformity with policy guidance from the COP. However, if any Party considers that a decision regarding one of the specific projects does not comply with the policies, eligibility criteria and programme priorities established by the COP in the context of the Convention, the COP should analyse the observations presented and take decisions on the basis of compliance with such policies, eligibility criteria and programme priorities. In the event that the COP considers that this specific project decision does not comply with the policies, eligibility criteria and programme priorities established by the COP, it may ask the governing body of the operating entity for further clarification on this specific project decision and in due time ask for a reconsideration of that decision;

(h) "The COP will periodically review and evaluate the effectiveness of all modalities established in accordance with Article 11.3. Such evaluations will be taken into account by the COP in its decision, pursuant to Article 11.4, on the arrangements for the financial mechanism."

B. Determination of the amount of funding necessary and available for the implementation of the Convention

25. The Committee decided at its ninth session to defer consideration of Article 11.3(d) in conjunction with its chapeau, to its tenth session (A/AC.237/55, para. 88). This involves agreements to be reached between the COP and the operating entity or entities with regard to the determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of the Convention and the conditions under which that amount shall be periodically reviewed.

26. In this connection, the GEF Instrument foresees arrangements or agreements which are to include procedures for determining jointly the aggregate GEF funding requirements for the purpose of the Convention and provides for a replenishment of resources to cover a period of three years. A note on elements relevant to the assessment of funding needs, contained in document A/AC.237/37/Add.4, was prepared by the interim secretariat and submitted to the Committee at its eighth session. A preliminary exchange of views among delegations on this issue had taken place at that session. The Committee may wish to consider this issue further and indicate what further work might be needed in this regard.

C. Process for agreeing on arrangements between the Conference of the Parties and the operating entity or entities

27. The question of channels of communication between the COP and organs of the operating entity or entities may be given further consideration by the Committee. In this connection, the Committee may consider the issue of a process for agreeing on arrangements between the COP and the operating entity and of reciprocal arrangements for representation at meetings.

28. The COP and the operating entity or entities are to agree on arrangements regarding modalities for their operational linkages (Article 11.3 (a), (b), (c) and (d)). After defining its position regarding these modalities, the Committee may wish to recommend a process for reaching such agreement with an operating entity.

29. The GEF Instrument includes a provision for reciprocal representation at meetings of representatives of the Convention-related bodies and those of the GEF. The draft rules of procedure for the GEF Council provide that "representatives of the United Nations Framework Convention on Climate Change ... shall be invited to attend the Council meetings". It is understood that this rule would allow for the attendance at the GEF Council meetings of representatives of the interim and permanent Convention secretariats, in addition to any elected officer of the Committee, the COP or another Convention body who may be designated to represent the Convention. The Committee may wish to consider reciprocal arrangements for the participation of representatives of the operating entity or entities in meetings of Convention bodies, consistent with section V of the draft rules of procedure of the COP.

30. The Committee will have before it an opinion of the United Nations Office of Legal Affairs regarding the above issues (A/AC.237/74).

IV. TEMPORARY ARRANGEMENTS BETWEEN THE COMMITTEE AND THE GLOBAL ENVIRONMENT FACILITY

31. The provisions of the GEF Instrument relating to governance and structure include the establishment of a Council which is to be the focal point for the relations of the GEF with Conferences of the Parties to conventions whose financial mechanisms are served by the GEF, and which is to ensure that activities financed by the GEF conform with guidance received from those conventions (see GEF Instrument, para. 20 (g) and (h)). The Council is also to consider and approve cooperative arrangements or agreements with such conventions and approve an annual report on GEF activities that will respond to the needs of these conventions (see the GEF Instrument, paras. 26, 27 and 31).

32. The new GEF Council is to meet for the first time in Washington D.C., on 12 and 13 July 1994. Among its other tasks, it is expected to appoint the Chief Executive Officer/ Chairperson (CEO) of the Facility and to agree to a one-year statement of work leading to the

adoption of a long-term operational strategy for the GEF. This strategy would include a substantial component on climate change, related to the Convention. This component is likely to be considered in a preliminary manner at a Council meeting in October 1994 and agreed upon at a Council meeting in April 1995, before final adoption by the Council in July 1995. Information on the outcome of the GEF Council session will be made available to the Committee in an addendum to this document.

33. It is important that, in the context of the interim arrangements under Article 21 and of the mandate of the Committee set forth in General Assembly resolution 47/195, the Committee should make an appropriate contribution to the activities of the GEF that are related to the Convention. This would also be consistent with the GEF Instrument. In particular, the Committee may wish to consider what guidance it could usefully provide to the work of the GEF on that component of its long-term operational strategy that is related to the implementation of the Convention.

34. To these ends, the Committee may consider:

(a) Adopting a decision that consolidates and formally communicates to the GEF Council the conclusions of the Committee on eligibility criteria, programme priorities, policies, the determination of "agreed full incremental costs", and on operational linkages between the COP and the GEF, reached at its tenth and previous sessions, which are relevant to the function of the GEF as the interim operating entity of the financial mechanism;

(b) Inviting the GEF Council to make a report, for consideration by COP 1, consistent with the conclusions of the Committee on the subject of reporting and the relevant provisions of the GEF Instrument;

(c) Requesting the Executive Secretary to collaborate with the CEO of the GEF, with a view to providing the GEF secretariat with such inputs as it may need to ensure that the provisions of the Convention and the related conclusions of the Committee are fully reflected in those parts of the long-term operational strategy of the GEF that relate to climate change.

35. With regard to this latter point, the Executive Secretary and his colleagues in the interim secretariat have sought to establish and maintain good communications and working relations with the Chairman and Administrator of the GEF and their colleagues. The interim secretariat has considered it important to promote a sound understanding of the Convention and its processes in the work of the GEF. It has been similarly important for the interim secretariat to be fully aware of the implications of GEF processes for its own work in support of the implementation of the financial mechanism of the Convention. Such constructive interaction between secretariats contributes to coherent support to intergovernmental processes that have many participating Governments in common. The need for collaboration is underlined by the establishment, within the framework of the GEF Instrument, of a GEF secretariat with expanded responsibilities. The Executive Secretary will seek to establish a solid working

relationship with the CEO of the GEF, who will head the secretariat of the Facility. The Committee may wish to endorse these efforts to promote secretariat collaboration in the context of the interim arrangements under Article 21.

V. CONSIDERATION OF THE MAINTENANCE OF THE INTERIM ARRANGEMENTS REFERRED TO IN ARTICLE 21, PARA. 3

36. Article 11.4 provides that the COP shall make arrangements to implement provisions regarding the financial mechanism at its first session, reviewing and taking into account the interim arrangements referred to in Article 21.3, and shall decide whether these interim arrangements shall be maintained. Within four years thereafter, the COP shall review the financial mechanism and take appropriate measures.

37. The Committee may wish to lay the ground for the review of the interim arrangements referred to in Article 21.3 by the COP at its first session, taking into account the GEF Instrument, and any other information that may be provided to the Committee at its current session.

38. On the issue of the possibility of designating additional operating entities for the financial mechanism, the Committee concluded at the ninth session that further study and consideration will be needed before any firm decision is made (A/AC.237/55, para. 86).